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IN THE MATTER OF: )  
 )  
Ward Transformer Superfund Site )  
Raleigh, Wake County, North Carolina )  
 )  
Ward Transformer Co. Inc. )  
Ward Ventures LLC )  
Reward Properties LLC )  
SETTLING PARTIES )  

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SETTLEMENT AGREEMENT  
  
U.S. EPA Region 4  
CERCLA Docket No. 04-2020-2501  
  
PROCEEDING UNDER SECTION  
122(h)(1) OF CERCLA,  
42 U.S.C. § 9622(h)(1)

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## **I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated from the Regional Administrator through the Director, Superfund Division, through the Deputy Director, Superfund Division, to the Chief, Superfund Enforcement and Community Engagement Branch by EPA Regional Delegation No. R-14-14-D. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division.

2. This Settlement Agreement is made and entered into by EPA and Ward Transformer Company, Inc., Ward Ventures LLC and Reward Properties LLC (“Settling Parties”). Settling Parties consent to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

## **II. BACKGROUND**

3. This Settlement Agreement concerns the Ward Transformer Superfund Site (“Site”) located in Raleigh, North Carolina. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on April 30, 2003, 68 Fed. Reg. 23,077.

5. Ward Transformer Company, Inc., operated by Ward Transformer Sales and Service, Inc., manufactured, repaired, sold, and reconditioned transformers, switchgear, and other similar types of electrical equipment. The Ward Facility contained an electrical equipment reconditioning building, offices, an area where transformers, construction debris, and scrap metal were stored (Transformer Storage Area), storage tanks, a storm water lagoon, and a wastewater treatment plant.

6. Ward Transformer Company, Inc. began operations at the Ward Facility in 1964 and continued operations until 2006. Until July 2019, Ward Transformer Company, Inc. owned the two parcels comprising the Ward Facility, located at 6730 Mt. Herman Road and 6800 Mt. Herman Road. Those two parcels, subject to condemnation, are now owned by the Raleigh Durham Airport Authority. Reward Properties LLC, and Ward Ventures LLC, own parcels adjacent to the Ward Facility property.

7. The Site consists of two operable units (OU1 and OU2) that include the Ward Facility and certain parcels adjacent to the facility (collectively OU2), and nearby drainage pathways and areas downgradient from the Ward Facility (collectively OU1), and encompasses the areal extent of the contamination therefrom in the surface and subsurface sediments, soils, and waters.
8. In response to a release or a substantial threat of a release of a hazardous substance at or from the Site, in April 2003, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.
9. On September 16, 2005, EPA Region 4 signed an Administrative Settlement Agreement and Order on Consent with potentially responsible parties to perform a time-critical removal action at the Ward Facility and adjacent parcels (now known as OU2). The removal action was completed August 2015.
10. EPA completed a Revised Remedial Investigation and Risk Assessment Report in September 2004, and a Remedial Investigation Report for Operable Unit 1 ("OU1"), Groundwater and Downstream Reaches, in July 2007. EPA completed a Feasibility Study Report for OU1, Downstream Reaches, in July 2007.
11. The decision by EPA on the remedial action to be implemented at OU1 is embodied in a Record of Decision for OU1 ("OU1 ROD"), executed on September 29, 2008, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). Pursuant to a settlement reached by EPA and certain potentially responsible parties for the Site ("PRPs"), these PRPs are currently undertaking the remedial work for OU1 required by the OU1 ROD.
12. On January 9, 2014, EPA Region 4 signed an Administrative Settlement Agreement and Order on Consent with certain PRPs to perform, and with certain federal agencies to partially fund, a supplemental remedial investigation/focused feasibility study of OU2 of the Site ("OU2 RI/FS AOC"). EPA anticipates publishing a Record of Decision that will outline the remedial action to be undertaken for OU2 after the completion of the RI/FS. In performing response actions for the Site, EPA has incurred response costs and will incur additional response costs in the future.
13. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.
14. EPA has reviewed the Financial Information submitted by Settling Parties to determine whether Settling Parties are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Parties have limited financial ability to pay for response costs incurred and to be incurred at the Site.
15. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling

Parties in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

16. On June 26, 2019, the Raleigh Durham Airport Authority initiated an action in the Superior Court of Wake County, North Carolina to condemn and appropriate certain property owned by Ward Transformer Company, Inc. (File No. 19-cv-008659). On the same day, the Raleigh Durham Airport Authority filed a Declaration of Taking and Notice of Deposit in the amount of \$2,935,200.00 (the “Escrow Deposit”). On July 23, 2019, the U.S. Attorney for the Eastern District of North Carolina filed a Notice of Removal to the U.S. District Court for the Eastern District of North Carolina and the case was removed to that Court (Civil Action No. 5:19-cv-304-D) (“Condemnation Case”).

### **III. PARTIES BOUND**

17. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their successors, and assigns. Any change in ownership or corporate or other legal status of Settling Parties, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Parties’ responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the parties represented by him or her.

### **IV. STATEMENT OF PURPOSE**

18. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Parties to make a cash payment and to implement land use restrictions to address alleged civil liability for the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

### **V. DEFINITIONS**

19. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

“Condemnation Case” shall mean the civil action filed on June 26, 2019, by the Raleigh Durham Airport Authority in the Superior Court of Wake County, North Carolina to condemn and appropriate certain property owned by Ward Transformer Company, Inc. (File No. 19-cv-008659), which action was later removed on July 23, 2019, by Motion of the U.S. Attorney for the Eastern District of North Carolina to the U.S. District Court for the Eastern District of North Carolina (Civil Action No. 5:19-cv-304-D).

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Escrow Deposit” shall mean the monetary amount of \$2,935,200.00 deposited by the Raleigh Durham Airport Authority pursuant to the Declaration of Taking and Notice of Deposit filed on June 26, 2019 in the Superior Court of Wake County, North Carolina (File No. 19-cv-008659).

“Financial Information” shall mean those financial documents identified in Appendix B.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Non-Condemnation Property” shall mean that portion of the Site that is owned by Settling Parties as of July 1, 2019. The Non-Condemnation Property is located at 6720 Mt. Herman Road, Morrisville, NC 27650 and 0 Lumley Road, Morrisville, NC 27650.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

“Parties” shall mean EPA and Settling Parties.

“Property or Properties” shall mean that portion of the Site that is owned by Settling Parties as of September 16, 2005. The Property is located at 6720 Mt. Herman Road, Morrisville, NC 27650, 0 Lumley Road, Morrisville, NC 27650, 6730 Mt. Herman Road, Morrisville, NC 27650, and 6800 Mt. Herman Road, Morrisville, NC 27650, and is designated and described in Appendix C. Property shall further mean all real property at the Site and any other real property, owned or controlled by Settling Parties, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, the properties identified in Appendix C.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Parties” shall mean Ward Transformer Co. Inc., Ward Ventures LLC and Reward Properties LLC.

“Site” shall mean the Ward Transformer Superfund Site located in Raleigh, Wake County, North Carolina. The Site consists of two operable units (OU1 and OU2) that include the Ward Facility and certain parcels adjacent to the facility (collectively OU2), and nearby drainage pathways and areas downgradient from the Ward Facility (collectively OU1) as described in the OU1 ROD, and encompasses the areal extent of the contamination therefrom in the surface and subsurface sediments, soils, and waters. The Site is generally depicted on the map attached as Appendix A.

“Ward Transformer Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“State” shall mean the State of North Carolina.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

## **VI. PAYMENT OF RESPONSE COSTS**

20. **Payment of Response Costs.** Through the U.S. District Court for the Eastern District of North Carolina’s distribution of the Escrow Deposit in the Condemnation Case, Civil Action No. 5:19-cv-304-D, Settling Parties shall agree that \$2,135,200 should be paid to EPA from the Escrow Deposit with the Court. If, for any reason, the settlement amount of \$2,135,200 is not paid in full from the Escrow Deposit, Settling Parties remain liable to the EPA for this amount.

21. The payment(s) shall be made to EPA to the following address:

US Environmental Protection Agency  
Superfund Payments - Region 4  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000



The payment shall reference Site/Spill ID Number A4S4 and the EPA docket number for this action.

22. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 20 (Payment of Response Costs) shall be deposited by EPA in the Ward Transformer Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

23. **Notice of Payment.** At the time of payment(s), Settling Parties shall also send notice that such payment has been made: (a) to EPA in accordance with Section XV (Notices and Submissions); and (b) to the EPA Cincinnati Finance Center (CFC) by email or by regular mail at:

**EPA CFC by email:** cinwd\_acctsreceivable@epa.gov

**EPA CFC by regular mail:** EPA Cincinnati Finance Center  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the Site/Spill ID Number and EPA docket number for this action.

## **VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

24. **Interest on Payments.** If Settling Parties' fail to make the payment required by Paragraph 20 (Payment of Response Costs) in accordance with the terms of that Paragraph, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment.

### **25. Stipulated Penalty**

a. If the Settling Parties fail to comply with any requirements of this Settlement Agreement, Settling Parties shall pay to EPA, as a stipulated penalty, \$500 per day per violation.

b. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Parties' receipt from EPA of a demand for payment of the penalties. Settling Parties shall make all payments required by this Section to EPA by Fedwire EFT to:



Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

and shall reference stipulated penalties, Site/Spill ID Number A4S4, and the EPA docket number for this action.

c. At the time of each payment, Settling Parties shall send notice that payment has been made as provided in Paragraph 23 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

26. In addition to the Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Parties' failure to comply with the requirements of this Settlement Agreement, if Settling Parties fail or refuse to comply with any term or condition of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

27. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Parties' payment of stipulated penalties shall not excuse the Settling Parties from performance of any other requirements of this Settlement Agreement, nor shall it interfere with the Court's disbursement of a portion of the Escrow Deposit to EPA as required by Paragraph 20.

#### **VIII. COVENANTS BY EPA**

28. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance of all obligations under this Settlement Agreement, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Settlement Agreement). These covenants are also conditioned upon the veracity and

completeness of the Financial Information provided to EPA by Settling Parties and the financial, insurance, and indemnity certification made by Settling Parties in Paragraph 53. These covenants extend only to Settling Parties and do not extend to any other person.

#### **IX. RESERVATIONS OF RIGHTS BY EPA**

29. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within Paragraph 28 (Covenants by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based on the ownership or operation of the Site by Settling Parties when such ownership or operation commences after signature of this Settlement Agreement by Settling Parties;
- e. liability based on Settling Parties' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Parties; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

30. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if (a) the District Court does not approve EPA receiving \$2,135,200 from the Escrow Deposit distribution in Civil Action No. 5:19-cv-304-D or (b) the Financial Information provided by Settling Parties, or the financial, insurance, or indemnity certification made by Settling Parties in Paragraph 53, is false or, in any material respect, inaccurate.

31. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

#### **X. COVENANTS BY SETTLING PARTIES**

32. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the North Carolina Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

33. These covenants shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 29.a (liability for failure to meet a requirement of the Settlement Agreement) or 29.b (criminal liability), but only to the extent that Settling Parties' claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

34. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

35. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that it may have for response costs relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Parties may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Parties.

## **XI. EFFECT OF SETTLEMENT/CONTRIBUTION**

36. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Parties), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

37. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Parties have, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of

CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 29.a (liability for failure to meet a requirement of the Settlement Agreement) or 29.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

38. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Parties have, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

39. Settling Parties shall, with respect to any suit or claim brought by it for matters related to Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Parties also shall, with respect to any suit or claim brought against them for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon Settling Parties. In addition, Settling Parties shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

40. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII.

41. Effective upon signature of this Settlement Agreement by Settling Parties, such Settling Parties agree that the time period commencing on the date of its signature and ending on the date EPA receives from such Settling Parties the payment(s) required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 37, and that, in any action brought by the United States related to the “matters addressed,” such Settling Parties will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Parties that it will not make this Settlement

Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

## **XII. PROPERTY REQUIREMENTS**

42. **Agreements Regarding Access and Non-Interference.** Settling Parties shall, with respect to the Non-Condensation Property:

a. Provide the United States, the State, potentially responsible parties who have entered or may enter into an agreement with the United States or the State for performance of response actions at the Site (hereinafter "Performing Parties"), and their representatives, contractors, and subcontractors with access at all reasonable times to its Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) Verifying any data or information submitted to the United States or the State;
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Obtaining samples;
- (4) Assessing the need for, planning, implementing, or monitoring response actions;
- (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Parties or their agents, consistent with Section XIII (Access to Information);
- (6) Assessing Settling Parties' compliance with the Settlement Agreement;
- (7) Determining whether the Non-Condensation Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement; and
- (8) Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Property.

b. Refrain from using the Non-Condensation Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site, including the following restrictions:

- (1) Prohibiting activities which could interfere with response actions at the Site;
- (2) Prohibiting use of contaminated groundwater;
- (3) Prohibiting activities which could result in exposure to contaminants in subsurface soils and groundwater;

- (4) Ensuring that any new structures on the Non-Condemnation Property will not be constructed in any manner which could interfere with response actions at the Site; and
- (5) Ensuring that any new structures on the Non-Condemnation Property will be constructed in a manner which will minimize potential risk of inhalation of contaminants.

43. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Non-Condemnation Property, Settling Parties shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such institutional controls.

**44. Notice to Successors-in-Title**

a. Settling Parties shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Non-Condemnation Property in the appropriate land records. The notice must: (1) include a proper legal description of the Property; (2) provide notice to all successors-in-title: (i) that the Property is part of, or related to, the Site; (ii) that EPA has selected a response action for OU1 and anticipates selecting future response actions for OU2 of the Site ; and (iii) that potentially responsible parties are required to implement the response action; and (3) identify the document(s) requiring implementation of the response action, including, if applicable, the name and civil action or docket number of the matter. Settling Parties shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Settling Parties shall, prior to entering into a contract to Transfer its Property, or 60 days prior to Transferring its Non-Condemnation Property, whichever is earlier:

- (1) Notify the proposed transferee that EPA has selected a response action(s) regarding the Site; that potentially responsible parties are required to implement response actions regarding the Site, including information identifying the document requiring such implementation; and
- (2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.

45. In the event of any Transfer of the Non-Condemnation Property, unless EPA otherwise consents in writing, Settling Parties shall continue to comply with their obligations under the Settlement Agreement.

46. Notwithstanding any provision of this Settlement Agreement, EPA and the State retains all of its their access authorities and rights, as well as all of its their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.



### **XIII. ACCESS TO INFORMATION**

47. Settling Parties shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as “Records”) within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

#### **48. Privileged and Protected Claims**

a. Settling Parties may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 48.b, and except as provided in Paragraph 48.c.

b. If Settling Parties assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Parties shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Settling Parties shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Parties’ favor.

c. Settling Parties may make no claim of privilege or protection regarding:

- (1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or
- (2) the portion of any Record that Settling Parties are required to create or generate pursuant to this Settlement Agreement.

49. **Business Confidentiality Claims.** Settling Parties may assert that all or part of a Record submitted to EPA under this Section or Section XIV (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Settling Parties shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Parties assert a business confidentiality claim. Records that Settling Parties claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Parties that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Parties.



50. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### **XIV. RETENTION OF RECORDS**

51. Until 3 years after the Effective Date, Settling Parties shall preserve and retain all non-identical copies of Records now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with respect to the Site, provided, however, that if Settling Parties are potentially liable as an owner or operator of the Site, Settling Parties must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of these requirements shall apply regardless of any corporate retention policy to the contrary.

52. At the conclusion of the document retention period, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 48 (Privileged and Protected Claims), Settling Parties shall deliver any such Records to EPA.

53. Each Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

- a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site and Settling Parties' financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;
- b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Parties executes this Settlement Agreement; and
- c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

#### **XV. NOTICES AND SUBMISSIONS**

54. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail

in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

**As to EPA:** C. Jade Rutland  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

**As to Settling Parties:** George W. House  
Brooks Pierce LLP  
230 North Elm Street  
2000 Renaissance Plaza  
Greensboro, NC 27401

Joseph A. Ponzi  
Brooks Pierce LLP  
230 North Elm Street  
2000 Renaissance Plaza  
Greensboro, NC 27401

## **XVI. INTEGRATION / APPENDICES**

55. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

“Appendix A” is a map of the Site.

“Appendix B” is a list of the financial documents submitted to EPA by Settling Parties.

“Appendix C” is a listing of the Properties.

## **XVII. PUBLIC COMMENT**

56. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may withhold its consent or seek to modify this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

## **XVIII. EFFECTIVE DATE**

57. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 56 has

closed and the United States has determined not to withhold its consent or seek to modify this Settlement Agreement based on the comments received, if any.

IT IS SO AGREED:

Signature Page for Settlement Agreement Regarding Ward Transformer Superfund Site

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

08/27/2020

Dated

**Maurice L. Horsey, IV**

Digitally signed by Maurice L. Horsey, IV  
Date: 2020.08.27 15:34:40 -04'00'

MAURICE L. HORSEY, IV

Chief

Enforcement Branch

Superfund & Emergency Management Division

Signature Page for Settlement Agreement Regarding Ward Transformer Superfund Site

**U.S. DEPARTMENT OF JUSTICE:**

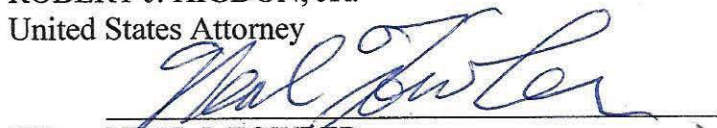
THOMAS MARIANI Digitally signed by THOMAS MARIANI  
Date: 2020.07.09 09:43:27 -04'00'

THOMAS A. MARIANI, JR.  
Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice



ANDREW W. INGERSOLL  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

ROBERT J. HIGDON, JR.  
United States Attorney



BY: NEAL I. FOWLER  
Assistant United States Attorney  
Civil Division  
150 Fayetteville Street, Suite 2100  
Raleigh, NC 27601-1461

July 9, 2020  
Dated

Signature Page for Settlement Agreement Regarding Ward Transformer Superfund Site

FOR \_\_\_\_\_:

Ward Transformer Co. Inc.  
Reward Properties LLC  
Ward Ventures LLC

A large, stylized handwritten signature in black ink, appearing to read 'Robert E. Ward III', is written over a horizontal line.

Robert E. Ward III  
President, Ward Transformer Co. Inc.  
Member/Manager, Reward Properties LLC  
Member/Manager, Ward Ventures LLC  
757 SE 17th Street, Unit 470  
Fort Lauderdale, Florida 33316

1-10-20  
Dated



# Appendix A

## Site Map





## **Appendix B**

List of the financial documents submitted to EPA by Settling Parties

### **Ward Transformer Co., Inc.**

1. Financial Statement of Corporate Debtor dated November 27, 2019

### **Ward Ventures, LLC**

1. Financial Statement of Corporate Debtor dated November 27, 2019

### **Reward Properties, LLC**

1. Financial Statement of Corporate Debtor dated November 27, 2019

## **Appendix C**

### List of the Properties

#### **Ward Transformer Co., Inc.**

1. Parcel ID – #0768731351 6730 Mt. Herman Road, Morrisville, NC 27650
2. Parcel ID – #0768723932 6800 Mt. Herman Road, Morrisville, NC 27650

#### **Ward Ventures, LLC**

1. Parcel ID - #0768525821 0 Lumley Road, Morrisville, NC 27650

#### **Reward Properties, LLC**

1. Parcel ID- #0768732585 6720 Mt. Herman Road, Morrisville, NC 27650